No. (1)

Supreme Court, U.S.
FILED

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In The

Supreme Court of the United States

PATRICK ALLAN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Was the "sophisticated means" sentencing enhancement properly applied where the defendant merely used simple deception to carry out his scheme?

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PETITION FOR WRIT OF CERTIORARI

PRAYER

Petitioner, Patrick Allan, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, which was entered in the above-entitled case on January 18, 2008.

OPINIONS BELOW

The Seventh Circuit's opinion affirming the Petitioner's sentence is published at 513 F.3d 712, and attached in Appendix ("App.") A. The district court's judgment order is attached in App. B.

JURISDICTION

On January 18, 2008, the United States Court of Appeals for the Seventh Circuit delivered its opinion affirming Petitioner Patrick Allan's enhanced sentence. App. A. No petition for rehearing was filed. This petition has been filed within 90 days of the Seventh Circuit's judgment and is timely. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

2. Title 18, United States Code, § 3553(a) provides:

> (a) Factors to be considered in imposing a sentence. – The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider –
>
> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
>
> (2) the need for the sentence imposed –
>
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (B) to afford adequate deterrence to criminal conduct;
>
> (C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentences and the sentencing range established for –

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines –

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments

have yet to be incorporated by the Sentencing Commission into amendments under section 994(p) of title 28);

(5) any pertinent policy statement –

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

STATEMENT OF THE CASE

1. Petitioner was charged with scheming to defraud Hewlett Packard (HP) of more than $500,000 in commissions in connection with computer sales, in violation of 18 U.S.C. § 1341. "Allan . . . faxed falsified forms to HP that listed 'Allanent' as the referral

partner for" computer purchases. *United States v. Allan*, 513 F.3d 712, 714 (7th Cir. 2008). "Allan also fabricated identities, e-mail addresses, and telephone numbers, which he listed on the forms so that any effort to verify the phony purchases would be routed back to him." *Id.*

Petitioner pled guilty to one count of mail fraud. The probation officer calculated Allan's base offense level under the United States Sentencing Guidelines to be Level 21, then subtracted three levels for acceptance of responsibility. This total offense level, combined with Allan's Criminal History Category of I, resulted in a guidelines imprisonment range of 27 to 33 months. The probation officer recommended a sentence of 27 months of imprisonment.

The United States District Court, the Honorable John F. Grady, declined to adopt either the offense level calculation or the officer's recommended sentence. Instead, the district court decided *sua sponte* that Allan's base offense level should be increased by two levels because Allan had employed "sophisticated means." With a recalculated total offense level of 20, Allan's new guidelines range was 33 to 41 months. The district court sentenced Allan to 41 months of imprisonment.

2. Patrick Allan appealed. Neither the probation officer, the government, nor Patrick Allan had contemplated the "sophisticated means" enhancement when computing a reasonable sentence. All parties, save the district court, seemingly agreed that Allan

had utilized mere dishonesty, rather than "especially complex or especially intricate offense conduct." Application Note 8(B) to U.S.S.G. § 2B1.1. However, once the district court proposed the enhancement, the government wasted no time in shifting its allegiance to Judge Grady's determination.

The Seventh Circuit concluded that the district court was not clearly erroneous when it applied a two-level increase to Allan's offense level for perpetrating a crime involving "sophisticated means." The panel held that phony e-mail addresses and fax headers, combined with the fictitious business entities, allowed Allan to conceal his offense from "HP, a sophisticated company," even though nothing in U.S.S.G. § 2B1.1 purports to make the sophistication of the victim a decisive factor.

REASONS FOR GRANTING THE WRIT

I. THE DISTRICT COURT IMPROPERLY ADDED THE "SOPHISTICATED MEANS" SENTENCING ENHANCEMENT TO PETITIONER'S SENTENCE, WHEN THE FACTS OF THE CASE CLEARLY SHOWED PETITIONER EMPLOYED SIMPLE DECEPTION TO EXECUTE THE SCHEME

Section 2B1.1(b)(9)(C) of the United States Sentencing Guidelines addresses offenses involving fraud or deceit, and provides for an enhanced sentence where "the offense otherwise involved sophisticated

means." The term "sophisticated means" is then defined in Application Note 8(B) to Section 2B1.1: "sophisticated means" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. The application note goes on to describe such conduct:

> For example, in a telemarketing scheme, locating the main office in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.

By definition, fraud entails the use of deceit to achieve an objective. The "sophisticated means" enhancement was not designed to penalize ordinary fraud, but "especially complex" fraud or "especially intricate" offense conduct. Application Note 8(B) to Section 2B1.1. Patrick Allan's dealings with Hewlett Packard are a far cry from the conduct contemplated by the enhancement. Certainly Allan was dishonest regarding his participation in the Hewlett Packard "influencer" program, but to deem his conduct sophisticated or complex grossly mischaracterizes Allan's behavior.

Moreover, both the district court and the court of appeals improperly took the sophistication of Hewlett Packard into account when deciding this issue. Nowhere in Section 2B1.1 is the sophistication of the

victim ever mentioned as a relevant consideration. Nowhere in the application note does such an analysis enter into the equation. It is unequivocal that the modifier "sophisticated" applies to the execution or concealment of the offense. Thus, that Hewlett Packard is a "very sophisticated corporation" in the eyes of the district court, or "a sophisticated company" according to the court of appeals, (see *United States v. Allan*, 513 F.3d 712, App. A), is irrelevant in judging Patrick Allan's execution of the offense. Enhancing Allan's punishment because a sophisticated corporation was deceived by phony e-mail addresses and doctored fax headers misapplies Section 2B1.1(b)(9)(C) of the United States Sentencing Guidelines, and contravenes the Eighth Amendment to the United States Constitution.

II. THE CIRCUITS NEED GUIDANCE ON THE ISSUE OF WHAT CONDUCT IS SUFFICIENT TO TRIGGER THE "SOPHISTICATED MEANS" ENHANCEMENT

The Eighth Circuit upheld a "sophisticated means" enhancement where a defendant committed an elaborate mail fraud and used complex tactics to cover it up. *United States v. Anderson*, 349 F.3d 568 (8th Cir. 2003). In *Anderson*, the defendant first induced fraud victims to invest more than one million dollars in his company. *Id.* at 570. He then diverted nearly two-thirds of their investments to his personal use, investing the remainder in an undisclosed and highly risky company, and using the commingled funds of later investors to

pay interest to earlier investors. *Id.* In a similar case, that same court held that a mail fraud defendant's conduct in using a rented post office box under an assumed name and including fake testimonials in his mailings about the legitimacy of his wealth-building program did not deserve a "sophisticated means" enhancement. *United States v. Hance*, 501 F.3d 900, 911 (8th Cir. 2007). The *Hance* court reasoned that the defendant's conduct lacked the intricacy, deliberation, or complexity needed to distinguish his offense from garden variety mail fraud. *Id.* The *Hance* facts significantly coincide with those in *Allan*, and lend credence to Allan's contention that his was a garden variety mail fraud.

Meanwhile, the Seventh Circuit has consistently found conduct in mail fraud schemes to be sophisticated. The court upheld an enhancement for two defendants who participated in a disability insurance fraud scheme. *United States v. Rettenberger*, 344 F.3d 702 (7th Cir. 2003). One of the defendants faked a disability, and they both fooled a skilled neurologist and 14 insurers by presenting a diagnostic picture consistent with the injury the defendant purportedly suffered. *Id.* at 709. Again, the Seventh Circuit looked to the sophistication of the victims (neurologist, insurers) during the course of its analysis, contrary to the language of the Guidelines. *Id.*

The Second Circuit held conduct sophisticated where each step of the scheme was not elaborate, but the total scheme was sophisticated in the way all the steps were linked together so the defendant could

exploit different vulnerabilities in different systems in a coordinated way. *United States v. Jackson*, 346 F.3d 22, 25 (2nd Cir. 2003). Unlike the defendant in *Jackson*, Allan exploited a single vulnerability (the loosely monitored "influencer program") in a single system (Hewlett Packard). That "sophisticated" Hewlett Packard cut Allan checks without conducting due diligence should not be a factor that increases Allan's sentence. The totality of Allan's scheme pales in comparison to the scheme in *Jackson*, in which the defendant first obtained personal information about wealthy targets from Internet information brokers, then used it to obtain additional information such as credit card numbers with which he reserved hotel rooms and ordered expensive merchandise, then picked up the merchandise and resold it.

As shown by the juxtaposition of a case like *Anderson* with a case like *Hance*, and the Seventh Circuit's repeated reliance on a victim-centered sophistication analysis, confusion exists as to what conduct deserves the "sophisticated means" enhancement. Title 18 U.S.C. § 3553(a)(6) emphasizes the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct. Allan's conduct lacked intricacy and complexity, and was more in line with the defendant in *Hance*, who avoided the enhancement. The appellate courts have not ruled in uniform fashion, and the analysis undertaken is mostly divergent. Clarification by this Honorable Court is needed.

CONCLUSION

WHEREFORE, based on the foregoing, Petitioner Patrick Allan respectfully moves this Honorable Court to enter an order granting certiorari, vacating the Seventh Circuit's judgment, reversing the Seventh Circuit's judgment, remanding for further proceedings, and granting any other appropriate relief.

Respectfully submitted,

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513 F.3d 712

United States Court of Appeals, Seventh Circuit.
UNITED STATES of America, Plaintiff-Appellee,
v.
Patrick ALLAN, Defendant-Appellant.
No. 07-1911.

Argued Nov. 8, 2007.
Decided Jan. 18, 2008.

John Dever (argued), Office of the United States Attorney, Chicago, IL, for Plaintiff-Appellee. Matthew J. McQuaid (argued), Chicago, IL, for Defendant-Appellant.

Before EASTERBROOK, Chief Judge, and FLAUM and KANNE, Circuit Judges.

KANNE, Circuit Judge.

Patrick Allan pled guilty to one count of mail fraud, *see* 18 U.S.C. § 1341, and was sentenced to 41 months' imprisonment. On appeal he challenges his sentence, which the district court calculated after increasing his offense level because he employed "sophisticated means" when perpetrating the fraud. *See* U.S.S.G. § 2B1.1(b)(9)(C). We affirm the sentence imposed by the district court.

I. HISTORY

In order to promote sales of its products, computer giant Hewlitt-Packard ("HP") implemented an "Influencer Program," which paid out commissions to HP "referral partners" – individuals and companies

that sold HP computers to third-party buyers. After each referred sale, the buyer would return a form to HP that indicated the name of the referral partner, as well as the buyer's name and contact information. Once HP received this form, it would mail a check to the listed referral partner.

In early 2004, Allan enrolled as a referral partner in the Influencer Program, doing business as "Allanent." At the same time, Allan developed an employee contact at HP. This insider contact provided Allan with the names of customers from large institutions, such as hospitals and universities, who had purchased large quantities of computers without the use of a referral partner. Allan, in turn, faxed falsified forms to HP that listed "Allanent" as the referral partner for these purchases. Allan also fabricated identities, e-mail addresses, and telephone numbers, which he listed on the forms so that any effort to verify the phony purchasers would be routed back to him.

To further this scheme, Allan created e-mail addresses and telephone numbers that would appear sufficiently genuine to deceive HP. For example, Allan disguised a fictitious buyer for the University of Massachusetts – which uses e-mail addresses ending in "umass.edu" – by listing a counterfeit e-mail address that ended in "umass.org." Allan also altered the headers on facsimile transmissions so they would appear to have originated with the actual HP buyers, and forged signatures on the forms for his invented purchasers. Between April 2004 and January 2005,

Allan utilized this chimerical scheme to claim nearly $547,000 in referral commissions from HP, and received checks from HP for approximately $484,000.

In early 2005, HP noticed that Allan had received an unusually large number of commissions, and decided to conduct an audit of his sales. HP's investigation revealed that neither Allan nor Allanent were responsible for any of the sales that Allan claimed in the forms. In January 2005, HP terminated Allanent as a referral partner and sent him a letter that demanded he return the monies HP had paid to him. But Allan had already squandered his illicit gains, and a few months later, Allan re-enrolled in the HP Influencer Program, this time doing business as "Central Computers." In May 2005, Allan employed the same apparatus he had used as Allanent to claim over $35,000 in fraudulent commissions for Central Computers. HP paid the full amount to Allan, even though, again, Allan had not actually influenced the HP sales. HP once again discovered this, terminated Allan as a referral partner, and then reported his conduct to the government.

In November 2005, a grand jury indicted Allan on two counts of mail fraud in violation of 18 U.S.C. § 1341. Eventually, Allan agreed to plead guilty to one count of violating § 1341. After Allan pled guilty, the probation officer prepared a presentence

investigation report (PSR),[1] in which he computed Allan's base offense level at 7 because § 1341 carries a statutory maximum term of imprisonment of 20 years. *See* U.S.S.G. § 2B1.1(a)(1). To this, the probation officer added 14 levels based on Allan's intended pecuniary harm to HP ($582,263). *See id.* § 2B1.1(b)(1)(H). However, the probation officer did not adjust Allan's offense level upward because of the "sophisticated means" Allan employed to perpetuate his fraud – in the officer's view, Allan's behavior constituted "mere dishonesty" and not sophisticated means. *See id.* § 2B1.1(b)(9)(C). The probation officer then subtracted a total of three levels because Allan had accepted responsibility for his actions: two levels were deducted because Allan entered a plea agreement and ultimately pled guilty, and one additional level was deducted upon a motion by the government because Allan's plea was timely. *See id.* § 3E1.1. These calculations resulted in a total offense level of 18. This total offense level, when combined with Allan's Criminal History Category of I, yielded a guidelines imprisonment range of 27 to 33 months. The probation officer recommended a sentence of 27 months' imprisonment.

At Allan's sentencing hearing in April 2007, the district court discussed the PSR and recommendation with the parties, but then declined to adopt either the

[1] The 2006 edition of the United States Sentencing Guidelines Manual was used in calculating both the PSR and sentence in this case.

PSR's offense level calculation or the officer's recommended sentence. The district court decided that Allan's base offense level should be increased by two levels because Allan had created false identities and fictitious contact information, which, in the court's view, constituted sophisticated means. As a result, the court recalculated Allan's sentence using a total offense level of 20; this yielded a new guidelines range of 33 to 41 months' imprisonment. After considering the parties' arguments regarding the length of sentence to impose and the factors articulated in 18 U.S.C. § 3553(a), the district court announced that a sentence on the high-end of the guidelines range was warranted given Allan's greed and the extent of his fraud, as well as the need to promote general deterrence and respect for the law. *See Rita v. United States,* ___ U.S. ___, 127 S.Ct. 2456, 2468, 168 L.Ed.2d 203 (2007); *United States v. Dean,* 414 F.3d 725, 729 (7th Cir.2005). Accordingly, the district court sentenced Allan at the top of the guidelines range to 41 months' imprisonment.

II. ANALYSIS

In this appeal, Allan challenges only the district court's application of the sophisticated means offense-level increase, *see* U.S.S.G. § 2B1.1(b)(9)(C), when calculating his guidelines imprisonment range. Allan claims that his actions exhibited "mere dishonesty" rather than sophistication, and he argues that the probation officer's recommendation supports this assertion.

We review the district court's findings of fact and applications of the Sentencing Guidelines for clear error. *United States v. Stitman,* 472 F.3d 983, 986 (7th Cir.2007). "A finding of fact is clearly erroneous only if, based upon the entire record, we are left with the definite and firm conviction that a mistake has been committed." *United States v. Gallardo,* 497 F.3d 727, 740 (7th Cir.2007) (quoting *United States v. Chamness,* 435 F.3d 724, 726 (7th Cir.2006)). And, of course, we review the district judge's sentencing findings notwithstanding any disparity between those findings and the probation officer's recommendation, which the judge remains free to reject. *See, e.g., United States v. Blue,* 453 F.3d 948, 951 (7th Cir.2006).

We do not believe that the district court clearly erred when it applied a two-level increase to Allan's offense level on the basis of his crime involving sophisticated means. Application Note 8(B) to U.S.S.G. § 2B1.1 states in full:

> *Sophisticated Means Enhancement.* – For purposes of subsection (b)(9)(C), "sophisticated means" means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious

> entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.

The parties concede that this note does not provide an exhaustive list of examples of sophisticated means. *See United States v. Madoch,* 108 F.3d 761, 766 (7th Cir.1997). Rather, the note reflects that a wide range of criminal conduct might be deemed sophisticated.

In this case, Allan used fictitious business entities, "Allanent" and "Central Computers," to conceal his offense from HP, a sophisticated company. In addition, he evaded discovery for over a year by doctoring fax headers and fashioning phony e-mail addresses to resemble legitimate contact information. Moreover, after HP detected the fraud and removed Allanent from its list of referral partners, Allan perpetrated a similar scheme as Central Computers for another month.

Allan's scheme parallels conduct that we have previously deemed "sophisticated." *See United States v. Rettenberger,* 344 F.3d 702, 709 (7th Cir.2003) (finding sophistication where defendant fooled "a skilled neurologist and 14 insurers"); *cf. Madoch,* 108 F.3d at 766 (finding sophistication under § 2T1.1(b)(2), the analog of § 2B1.1(b)(9)(C) in tax fraud cases, where defendant falsified tax forms and used false Social Security numbers); *United States v. Wu,* 81 F.3d 72, 73-74 (7th Cir.1996) (finding sophistication under § 2T1.1(b)(2) where defendant falsified business records, used false names, and provided misleading tax

information). And the district court did not clearly err merely because Allan could have taken more elaborate steps to conceal his fraud. *See Madoch,* 108 F.3d at 766. Therefore, in our view, Allan's conduct falls well within the range outlined by § 2B1.1(b)(9)(C). *See also Stitman,* 472 F.3d at 987 (noting the well-established rule that guidelines application notes are binding authority).

At the end of his brief, Allan offers a perfunctory challenge to the reasonableness of his sentence under *United States v. Booker,* 543 U.S. 220, 264, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005). We presume that Allan's 41-month sentence is reasonable because it falls within the correctly calculated guidelines range of 33 to 41 months. *See Rita,* 127 S.Ct. at 2465; *United States v. Sanchez,* 507 F.3d 532, 539-40 (7th Cir.2007); *United States v. Mykytiuk,* 415 F.3d 606, 608 (7th Cir.2005). And because Allan has offered nothing to indicate that his sentence offends the § 3553(a) factors, he has failed to rebut the presumption that his Guidelines sentence is reasonable. *Mykytiuk,* 415 F.3d at 608.

III. CONCLUSION

For the foregoing reasons, the sentence imposed by the district court is AFFIRMED.

United States District Court
Northern District of Illinois

UNITED STATES OF AMERICA	)	
	)	**Case Number: 05-CR-927-1**
v.	)	**Judge: John F. Grady**
Patrick Allan	)	

Matthew John McQuaid,
Defendant's Attorney
Juliet S. Sorenson, AUSA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On
or After November 1, 1987)

(Filed Apr. 17, 2007)

THE DEFENDANT ENTERED A PLEA OF:

guilty to Count(s) One of the indictment, which was accepted by the court. All remaining counts are dismissed.

THE DEFENDANT IS CONVICTED OF THE OFFENSE(S) OF:

Title & Section	Description of Offense	Date Offense Concluded	Count Number(s)
18 U.S.C. §1341	Mail Fraud	06/2005	One

The defendant is sentenced as provided in the following pages of this judgment.

IMPRISONMENT

IT IS THE JUDGMENT OF THIS COURT THAT:

the defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total uninterrupted term of **41 months** as to Count One. While incarcerated, defendant is ordered to participate in a Alcohol & Drug Treatment Program as well as a Mental Health Treatment program directed by the Bureau of Prisons.

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for the periods specified for each count of conviction.

> The defendant is sentenced on all count(s) of conviction, namely, Count One to a period of 3 years of Supervised Release.

The defendant shall report immediately to the probation office in the district in which the defendant is to be supervised, but no later than seventy-two hours after sentencing. In addition, see the attached page(s) defining the mandatory, standard and discretionary conditions of probation that apply in this case.

MANDATORY CONDITIONS OF SUPERVISED RELEASE
(As set forth in 18 U.S.C. § 3583 and U.S.S.G. § 5D1.3)

1) For any offense, the defendant shall not commit another federal, state or local crime;

2) for any offense, the defendant shall not unlawfully possess a controlled substance;

3) for offenses committed on or after September 13, 1994, the defendant shall refrain from any unlawful use of a controlled substance and submit to one drug test within fifteen days of release from imprisonment and at least two periodic drug tests thereafter for use of a controlled substance as determined by the court;

4) for a domestic violence crime committed on or after September 13, 1994, as defined in 18 U.S.C. § 3561(b) by a defendant convicted of such an offense for the first time, the defendant shall attend a rehabilitation program in accordance with 18 U.S.C. § 3583(d);

5) for a defendant classified as a sex offender pursuant to 18 U.S.C. § 4042(c)(4), the defendant shall comply with the reporting and registration requirements set forth in 18 U.S.C. § 3583(d);

6) the defendant shall cooperate in the collection of a DNA sample from the defendant if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 and the Justice for All Act of 2004; and

7) The defendant shall pay any balance on the special assessment, restitution and/or fine imposed against the defendant.

STANDARD CONDITIONS OF SUPERVISED RELEASE

1) For any felony or other offense, the defendant shall not possess a firearm, ammunition, or destructive device as defined in 18 U.S.C. § 921;

2) the defendant shall not leave the judicial district without the permission of the court or probation officer (travel outside the continental United States requires court authorization);

3) the defendant shall report to the probation officer as directed by the court or the probation officer and shall submit a truthful and complete written report within the first five days of each month;

4) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

5) the defendant shall provide to the probation officer access to any requested financial information including, but not limited to, tax returns, bank statements, credit card statements, credit applications, etc.;

6) the defendant shall support his or her dependents and meet other family responsibilities;

7) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer

for schooling, training, or other acceptable reasons;

8) the defendant shall notify the probation officer ten (10) days prior to any change in residence or employment;

9) the defendant shall refrain from excessive use of alcohol;

10) the defendant shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician, and shall submit to periodic urinalysis tests as requested by the probation officer to determine the use of any controlled substance;

11) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

12) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;

13) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;

14) the defendant shall notify the probation officer within seventy-two (72) hours of being arrested or questioned by a law enforcement officer;

15) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

16) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement; and

17) If this judgment imposes a special assessment, restitution or a fine, it shall be a condition of probation or supervised release that the defendant pay any such special assessment, restitution or fine in accordance with the court's order set forth in the Criminal Monetary Penalties sheet of this judgment.

DISCRETIONARY CONDITIONS OF SUPERVISED RELEASE

The defendant shall also comply with the following additional conditions of supervised release:

Pursuant to 18 U.S.C. §3583(d) as a condition of supervised release, the defendant shall reimburse the following identified victim(s) in the amounts specified:

Victim	Amount Ordered
Hewlett Packard Company	$519,644.00

The defendant shall participate in a drug aftercare program approved by the probation officer, which may include residential program for treatment of a narcotic addiction or drug or alcohol dependency and/or testing for detection of substance use or abuse. Defendant is also ordered to participate in a Mental Health Treatment Program at the direction of the Probation Office.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the "Schedule of Payments." Unless waived, the defendant shall pay interest on any restitution and/or fine of more than $2,500, unless the restitution and/or fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). The payment options may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

Total Assessment(s)	Total Fine	Restitution	**Mandatory Costs of Prosecution**
$100.00	Fine Waived	**$519,644.00**	**$**

The defendant shall notify the United States Attorney's Office having jurisdiction over the defendant within thirty days of any change of name, residence or mailing address until all special assessments, restitution, fines, and costs imposed by this judgment are fully paid.

Restitution is ordered in the amount of $519,645.00

Restitution to be paid as listed below.

Name of victim entitled to restitution (mailing address noted for public entities only)	Restitution Ordered	Priority
Hewlett Packard Company	$519,644.00	

If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless specified otherwise in the priority payment column above. Pursuant to 18 U.S.C. § 3664(I), all non-federal victims shall be paid in full prior to the United States receiving payment. Pursuant to 18 U.S.C. § 3664(j), if a victim has received compensation from insurance or any other source with respect to a loss, restitution shall be paid to the person who provided or is obligated to provide the compensation. All restitution to victims required by the order shall be paid to the victims before any restitution is paid to such a provider of compensation.

SCHEDULE OF PAYMENTS

- Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs. If this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment.

- All criminal monetary penalty payments, except those payments made through the Bureau of Prisons' Inmate financial Responsibility Program, are to be by money order or certified check payable to the Clerk of the Court, U.S. District Court, unless otherwise directed by the Court.
- Unless waived, the defendant shall pay interest on any fine and/or restitution of more than $2,500, unless the same is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f). Payment options included herein may be subject to penalties of default and delinquency pursuant to 18 U.S.C. § 3612(g).
- Pursuant to 18 U.S.C. §§ 3613(b) and (c) and 3664(m), restitution and/or fine obligations extend for twenty years after release from imprisonment, or from the date of entry of judgment if not sentenced to a period of imprisonment.

Payment of the total criminal monetary penalties shall be due as follows:

> In installments in equal payments of 15% of net monthly income.

Pursuant to 18 U.S.C. § 3664(k) the defendant must notify the court of any material changes in the defendant's economic circumstances. Upon such notice, the court may adjust the installment payment schedule.

Pursuant to 18 U.S.C. § 3664(n), if a person is obligated to provide restitution, or pay a fine, received substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required

to apply the value of such resources to any restitution or fine still owed.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons: **before 2:00 P.M. on June 4, 2007.**

Date of Imposition of Judgment/Sentencing: April 4, 2007

/s/ John F. Grady
JOHN F. GRADY
UNITED STATES DISTRICT JUDGE

Dated at Chicago, Illinois this 17 day of April, 2007.